

BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

56035

In the matter of

NOTICE OF PROPOSED RULEMAKING
CONCERNING SECURITY PROGRAMS
OF FOREIGN AIR CARRIERS

Notice No. 98-17

Docket No. FAA-1998-4758-55

COMMENTS OF THE
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.

The Air Transport Association of America, Inc. submits these comments in response to the Federal Aviation Administration's notice of proposed rulemaking concerning foreign air carrier security programs. 63 Fed. Reg. 64764 (Nov. 23, 1998). We share the goal of the NPRM, which is to "increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States." Id.

The successful completion of this rulemaking proceeding will conclude the decade-long effort to ensure that all Americans flying to and from the United States enjoy the protection of the same security measures on such journeys, irrespective of the airline that is carrying them. Congress enacted section 322 of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1254-55, to clarify that it intended to require this uniformity. Section 322, which is codified at 49 U.S.C. 544906, contains the clarified "level playing field" mandate that is the reason for this proceeding.

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The House of Representative's Conference Report about the Antiterrorism Act emphasized that the objective of section 322 was to protect all Americans flying to and from the United States. It stated that the legislation was needed to dispel the ambiguity that seemed to have crept into the interpretation of the foreign air carrier security program requirement of the Aviation Security Improvement Act of 1990. Pub. Law No. 101-604, 104 Stat. 3075, §105(k). The report observed that:

“It was the intent of Congress [in the 1990 legislation] to ensure that all Americans would be guaranteed adequate protection from terrorist attacks on international flights arriving in or departing from the United States, regardless of the nationality of the air carrier providing the service.”

House Conference Report No. 104-518 at 113 (April 15, 1996).

Federal Aviation Regulation section 129.25(b) establishes the basic requirement for security programs for foreign air carriers that conduct passenger operations, whether scheduled or public charter, to and from the United States. 14 C.F.R. §125.29(b). Section 125.29(e) directs covered foreign air carriers to file their security programs with the Administrator for approval. Id. §129.25(e). Section 223 of the Antiterrorism Act prohibits the approval of such a plan unless it requires the foreign air carrier to adhere to the identical security measures that the Administrator imposes on U.S. air carriers for the same operations. 49 U.S.C. §44906. The NPRM proposes one method of implementing that mandate by amending section 129.25(e).

The FAA notes in the NPRM that as part of the “level playing field” process that would result from adoption of the proposed new rule, it would perform country-by-country reviews of security requirements. 63 Fed. Reg. at

64766. Country-by-country evaluations are the most sensible starting point to fulfil the statutory mandate to impose identical security measures. These evaluations, however, should be part of a bilateral undertaking by the FAA and its regulatory counterpart in a given nation to negotiate the security requirements for the carriage of all passengers between the United States and that nation. The purpose of these negotiations would be to establish identical security measures for all passenger carriers operating between the two countries. Every carrier, irrespective of its nationality, would be required to abide by those measures for such carriage. Thus, the level playing field rule would embody two principles:

- . The FAA would negotiate country-by-country security arrangements with its foreign counterparts; and
- . These negotiated agreements would require the imposition of identical security measures on U.S. and foreign-flag airlines operating between the United States and that nation'

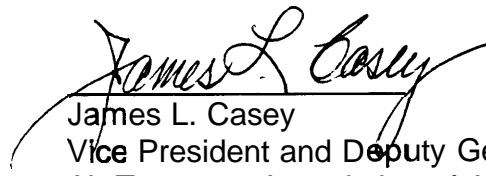
This formulation of the level playing field rule would meet the mandate of Section 322 of the Antiterrorism Act and would be consistent with U.S. international obligations.

¹ FAR section 129.25(e) could be amended as follows to implement these principles:

"(e) Each foreign air carrier performing passenger operations that require the adoption and use of a security program pursuant to paragraph (b) of this section shall have a security program that the Administrator determines to be acceptable. The Administrator shall establish with the civil aviation authority of each country that has nonstop service with the United States identical security measures for such operations of foreign air carriers and U.S. air carriers. Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have in force such a program that adheres to the foregoing identical security measures agreed to by the Administrator and the civil aviation authority of the country that is the first point of arrival after departing the United States or the last point of departure before arriving in the United States for such foreign air carrier."

We appreciate the initiation of this rulemaking proceeding. Issuing a rule as we describe above will realize the long-held goal of the travelling public, the U.S. Government, and the U.S. airline industry to afford U.S. citizens the same security measures when they fly to and from the United States, irrespective of the airline on which they travel.

Respectfully submitted,

A handwritten signature in black ink, reading "James L. Casey". The signature is written in a cursive style with a large, stylized "J" and "C".

James L. Casey
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